

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PASCUAL LUNA,

Plaintiff,

V.

MATTHEW CAMPBELL, ET AL.,

Defendants.

**Civil Action No.
15-11477-IT**

PROCEDURAL ORDER

TALWANI, D.J.

On March 30, 2015, Plaintiff Pascual Luna (“Luna”), while in custody at USP McCreary in Kentucky, filed this pro se action alleging violation of 42 U.S.C. § 1983 and the Massachusetts Civil Rights Act, M.G.L. c. 12, § 11, stemming from Luna’s 2006 arrest on drug-related charges. See Docket No. 1. With his complaint, he filed an Application to Proceed in District Court Without Prepayment of Fees (“Application”). See Docket No. 2.

Because Luna is a prisoner-plaintiff, his Application must be accompanied by “a certified copy of the trust fund account statement . . . for the 6-month period immediately preceding the filing of the complaint . . . obtained from the appropriate official of each prison at which the prisoner is or was confined” so that the court may determine the initial partial filing fee and subsequent monthly payments required for the filing fee as required under the Prison Litigation Reform Act. 28 U.S.C. § 1915(a)(2), (b). For Luna, the relevant 6-month period is October 2014 to March 2015. The prison account statement included with Luna’s original Application

covered the period from April 19, 2014 to December 6, 2014, see Docket No. 2-1, thus including complete information for only two of the months (October and November 2014) in the six months preceding the filing of the action.

By Memorandum and Order dated June 15, 2015, the court granted Luna's Application, but deferred assessment of Luna's filing fee obligations, pending receipt of Luna's updated prison account statement. See Docket No. 6.

On October 13, 2014, Luna filed a motion stating that he had been transferred from Kentucky to New Hampshire and requesting a copy of the Application requiring his signature and additional time to provide the signed document to the court. See Docket No. 11. With the motion, Luna also submitted a prison account statement for the period beginning June 19, 2015 and continuing through September 20, 2015 when he was incarcerated at Berlin FCI. See Docket No. 12.

By Procedural Order dated November 17, 2015, the motion for a new Application was granted and he was provided additional time to file an Application with his signature and accompanied by an updated prison account statement. See Docket No. 14.

Now before the Court are Luna's signed Application and updated prison account statement. See Docket Nos. 16, 17. The most recent statement provided by Luna begins in March 2015 and continues through November 2015. See Docket No. 17.

Even considering all of the prison account statements submitted by Luna, three months of pre-filing data is missing for the three month period of December 2014 through February 2015. Accordingly, the Court calculates Luna's filing fee obligation based upon the information provided for the first month prior to the filing of this action (March 1-31, 2015) and the five

month period following the filing of the complaint (April 1, 2015 through August 24, 2015). See Docket No. 17.

Upon review of Luna's prison account statement, and based upon the average monthly deposits for the six month period beginning March 1, 2015 and continuing through August 24, 2015, Luna is assessed an initial, partial filing fee of \$20.72, pursuant to 28 U.S.C.

§ 1915(b)(1)(B). The remainder of the fee, \$329.28, is to be assessed and collected in accordance with 28 U.S.C. § 1915(b)(2). The Clerk shall send a copy of this Order to the Treasurer's Office at FCI Berlin, along with the standard Notice to Prison form. If Luna seeks modification of the assessment of this filing fee, he may file a motion demonstrating good cause for any requested modification.

Finally, Fed. R. Civ. P. 4(m) requires Luna to effect proper service of process upon the defendants and to file proof of service with the court. The Court's records indicate that summons were issued on June 15, 2015, and mailed to Luna at USP McCreary in Kentucky. However, proof of service has not been filed with the court. See Docket. If Luna did not receive the summons, or if he received the summons and failed to arrange for service by the U.S. Marshals Service, he should promptly advise the court and seek an extension of time for service. Luna is reminded that failure to file proof of service may result in dismissal of this action.

Based upon the foregoing, it is hereby ORDERED that

- (1) The filing fee obligation owed by plaintiff is assessed with an initial, partial filing fee of \$20.72, pursuant to 28 U.S.C. § 1915(b)(1)(B). The remainder of the fee, \$329.28, is to be assessed and collected in accordance with 28 U.S.C. § 1915(b)(2);
- (2) The Clerk shall send a copy of this Order to the Treasurer's Office at FCI Berlin, and terminate the pending Application; and
- (3) If Luna did not receive the summons, or if he received the summons and failed to

arrange for service by the U.S. Marshals Service, he should promptly advise the court and seek an extension of time for service.

So ordered.

/s/ Indira Talwani

United States District Judge

Dated: 12/11/2015